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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Consider options and give direction regarding the Water, Wastewater Low Income Discounts, Senior Fixed Income Discounts and the Lodi CARE package Program

MEETING DATE: September 15, 2004

PREPARED BY: City Attorney

RECOMMENDED ACTION: Consider options and give direction regarding the Water and Wastewater Low Income Discounts, Senior Fixed Income Discounts and the Lodi CARE package Program.

BACKGROUND INFORMATION: A question has arisen about whether the City of Lodi's low income discount program (known as SHARE - Ordinance 1750 introduced August 4, 2004), Senior Fixed Income Discount Program (also Ordinance 1750), the establishment of low-income water, sewer and refuse services (Resolution 2004-158 adopted August 4, 2004, and CARE package program (Resolution 2004-159 adopted August 4, 2004) can be funded by the rate structure under proposition 218. This question only applies to the water and wastewater programs because the electric utility is specifically exempted from Proposition 218, and the refuse utility is privately owned and exempt from Proposition 218. Proposition 218 provides that: "The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel." However, I do not believe this language prevents low-income discounts from being funded through the rate structure. First, low-income discounts are ubiquitous in the utility industry: Publicly regulated but privately owned utilities such as electric, gas and phone provide them across the country. Moreover, they provide a bad debt management tool that allows the collection of a portion of a bill that may otherwise never be collected in exchange for a reduced rate, a direct benefit to ratepayers at large. These programs also reduce the cost of bill collection and demands on staff time for collection issues.

Unfortunately, to date, no court has squarely addressed the issue and I must admit that some City Attorneys do not share my confidence in the above analysis. Based on this uncertainty, Council has two decisions to make. First do you wish to rescind the existing programs in order to avoid the question? If you do choose to rescind them, then you must determine if you want to re-establish them with an alternative funding source and what that source might be. Your funding options would be to put the programs up for approval as a special tax requiring a 2/3rds majority approval or to choose a 218 exempt funding source such as the general fund. Staff does not recommend the latter option given the current state of the general fund. The funding required for the programs is as follows:

	<u>SHARE</u>	<u>Sr./Fixed Income</u>	<u>CARE</u>
Water	\$ 60,300	\$ 3,300	\$ 15,000
Wastewater	\$ 46,700	\$ 2,500	\$ 15,000

APPROVED:

Janet S. Keeter, Interim City Manager

If Council chooses to leave the programs in place then you need take no action other than the final adoption of Ordinance 1750. If Council chooses the general fund mechanism then you can finalize Ordinance 1750, and allow the existing ordinance to remain in place and simply change the funding mechanism by Resolution tonight. If Council chooses to put them up for election, you can finalize Ordinance 1750 and suspend the Water and Wastewater elements of all the discount programs by Resolution tonight pending the election.

Should Council wish to proceed with a special election the next established election date is March 8, 2005; however, San Joaquin County currently has no elections scheduled for that date. Consequently, if the City of Lodi chose to conduct a special election on March 8, 2005 it would incur the full cost of doing so, which is estimated at \$94,500.

FUNDING: Water/Wastewater Funds or as directed


D. Stephen Schwabauer
City Attorney

DSS/pn

Attachment